

Adopted	Rejected
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## COMMITTEE REPORT

YES:	12
NO:	2

### MR. SPEAKER:

*Your Committee on Commerce and Economic Development, to which was referred House Bill 1529, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:*

- 1 Page 1, delete lines 1 through 17.
- 2 Delete page 2.
- 3 Page 3, delete lines 1 through 24, begin a new paragraph and insert:
- 4 "SECTION 1. IC 8-1-2-6.8, AS ADDED BY P.L.159-2002,
- 5 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 6 UPON PASSAGE]: Sec. 6.8. (a) This section applies to a utility that
- 7 begins construction of qualified ~~pollution control~~ property after March
- 8 31, 2002.
- 9 (b) As used in this section, "clean coal technology" means a
- 10 technology (including precombustion treatment of coal):
- 11 (1) that is used in a new or existing energy generating facility and
- 12 directly or indirectly reduces airborne emissions of sulfur,
- 13 mercury, or nitrogen oxides or other regulated air emissions
- 14 associated with the combustion or use of coal; and

- 1 (2) that either:
- 2 (A) was not in general commercial use at the same or greater
- 3 scale in new or existing facilities in the United States at the
- 4 time of enactment of the federal Clean Air Act Amendments
- 5 of 1990 (P.L.101-549); or
- 6 (B) has been selected by the United States Department of
- 7 Energy for funding under its Innovative Clean Coal
- 8 Technology program and is finally approved for such funding
- 9 on or after the date of enactment of the federal Clean Air Act
- 10 Amendments of 1990 (P.L.101-549).
- 11 (c) As used in this section, **"government mandated event" has the**
- 12 **meaning set forth in section 6.9 of this chapter.**
- 13 (d) As used in this section, "qualified pollution control property"
- 14 means: ~~an~~
- 15 (1) any:
- 16 (A) air, wastewater, solid waste, or thermal pollution
- 17 treatment, storage, or disposal system or pollution control
- 18 device ~~on~~ necessary to operate a coal burning energy
- 19 generating facility; or ~~any~~
- 20 (B) equipment that constitutes clean coal technology;
- 21 that has been approved for use by the commission and that meets
- 22 applicable state or federal requirements; ~~(d)~~ or
- 23 (2) any air, wastewater, solid waste, or thermal pollution
- 24 treatment, storage, or disposal system, pollution control
- 25 device, or monitoring device that:
- 26 (A) is used for any plant, equipment, or facility used or to
- 27 be used for the production, transmission, delivery, or
- 28 furnishing of heat, light, or power;
- 29 (B) is approved for use by the commission; and
- 30 (C) meets applicable state or federal requirements;
- 31 on which construction began after March 31, 2002.
- 32 (e) As used in this section, "qualified property" means any:
- 33 (1) qualified pollution control property; or
- 34 (2) qualified utility system property.
- 35 (f) As used in this section, "qualified utility system property"
- 36 means any plant, equipment, or facility:
- 37 (1) that is used or to be used on a utility system;
- 38 (2) that is required to meet state or federal requirements of

1 any government mandated event; and

2 (3) on which construction began after April 1, 2003.

3 (g) As used in this section, "state or federal requirements"  
4 includes any requirement of:

5 (1) any state or federal law, rule, regulation, or order; or

6 (2) any adjudication, settlement, or consent decree in any  
7 federal or state court or administrative proceeding that  
8 interprets or applies a state or federal law, rule, regulation, or  
9 order;

10 that is in effect, applicable to a utility, and not stayed pending  
11 judicial appeal.

12 (h) As used in this section, "utility" refers to ~~any~~ an energy  
13 generating utility allowed by law to earn a return on its investment. (as  
14 defined in IC 8-1-2.5-2).

15 (i) As used in this section, "utility system" means a system used  
16 by a utility in whole or in part for:

17 (1) the production;

18 (2) the transmission;

19 (3) the distribution; or

20 (4) any combination of the production, transmission, or  
21 distribution;

22 of heat, light, or power to provide retail energy service (as defined  
23 in IC 8-1-2.5-3), regardless whether the service is provided under  
24 IC 8-1-2.5 or under another chapter of this article.

25 ~~(e)~~ (j) Upon the request of a utility that begins construction ~~after~~  
26 ~~March 31, 2002~~, of qualified ~~pollution control~~ property that is to be  
27 used and useful for the public convenience, the commission shall for  
28 ratemaking purposes add to the value of that utility's property the value  
29 of the qualified ~~pollution control~~ property under construction **if**  
30 **construction was begun:**

31 (1) in the case of qualified pollution control property, after  
32 March 31, 2002; or

33 (2) in the case of qualified utility system property, after April  
34 1, 2003.

35 ~~(f)~~ (k) The commission shall adopt rules under IC 4-22-2 to  
36 implement this section."

37 Page 3, line 30, delete "January" and insert "**April**".

38 Page 3, line 31, after "event." insert "**The term does not include a**

- 1 **civil penalty imposed under section 109.1 of this chapter."**
- 2 Page 3, line 38, delete "and".
- 3 Page 3, line 38, delete "effect" and insert **"impact"**.
- 4 Page 3, line 42, after "section," insert **""material impact" means**
- 5 **a cumulative increase in an energy utility's intrastate regulated**
- 6 **total operating expenses or capital costs in an amount equal to or**
- 7 **greater than four percent (4%) of the energy utility's authorized**
- 8 **net operating income.**
- 9 **(f) As used in this section,"**
- 10 Page 4, line 3, delete "(f)" and insert **"(g)"**.
- 11 Page 4, line 11, delete "(g)" and insert **"(h)"**.
- 12 Page 4, line 13, delete "without any" and insert **"with"**.
- 13 Page 4, line 13, after "offset" insert **"deemed appropriate by the**
- 14 **commission"**.
- 15 Page 4, line 17, delete "(h)" and insert **"(i)"**.
- 16 Page 4, line 23, delete "(i)" and insert **"(j)"**.
- 17 Page 4, line 32, delete "(j)" and insert **"(k)"**.
- 18 Page 4, line 39, delete "(k)" and insert **"(l)"**.
- 19 Page 5, line 37, after "request" insert **"made"**.
- 20 Page 5, line 37, after "utility" insert **"after April 1, 2003,"**.
- 21 Page 6, line 7, after "begin" insert **"or complete"**.
- 22 Page 6, line 18, delete "public utility cures" and insert **"commission**
- 23 **determines that the public utility has cured"**.
- 24 Page 7, line 5, delete "from the date of the final determination".
- 25 Page 7, line 6, delete "IC 24-4.6-1-102." and insert **"IC**
- 26 **24-4.6-1-102 from the date on which the public utility begins**
- 27 **collecting the rates implemented by the public utility under**
- 28 **subsection (c)."**
- 29 Page 7, between lines 10 and 11, begin a new paragraph and insert:
- 30 **"(f) As used in this subsection, "public utility" includes a**
- 31 **department of public utilities created under IC 8-1-11.1. If the**
- 32 **commission fails to issue an order making a determination in an**
- 33 **investigation initiated after April 1, 2003, into the reasonableness**
- 34 **of a public utility's basic rates and charges for electric or gas**
- 35 **service within nine (9) months after the initiation of the**
- 36 **investigation, the commission may order the public utility to**
- 37 **implement the rates determined by the commission based on the**
- 38 **commission's review under IC 8-1-2-42.5 and the evidence in the**

1 record at that time. If so ordered, the public utility shall begin  
2 implementing the rates on the first day of the first billing month  
3 following the expiration of the nine (9) month period allowed the  
4 commission under this subsection. A public utility must file notice  
5 with the commission of the public utility's implementation of the  
6 ordered rate changes under this subsection. The commission may  
7 suspend the running of the nine (9) month period if the commission  
8 finds that:

- 9 (1) a party other than the public utility did not file the party's  
10 case in chief in sufficient detail to allow the commission to  
11 begin or complete a review of the request;  
12 (2) a party other than the public utility materially altered the  
13 party's case in chief after its filing;  
14 (3) a discovery order compelling production by a party other  
15 than the public utility has not been satisfied within the time  
16 provided in the order; or  
17 (4) the commission temporarily lacks jurisdiction over the  
18 proceeding due to the filing of an interlocutory judicial appeal  
19 of a commission ruling or order.

20 The suspension ends and the nine (9) month period continues to  
21 run as soon as the commission determines that the party other than  
22 the public utility has cured the cause for suspension.

23 (g) If the commission issues an order making a determination in  
24 an investigation into the reasonableness of a public utility's basic  
25 rates and charges for electric or gas service but does not make the  
26 determination within the period allowed under subsection (f), the  
27 public utility must continue, after the order is issued, to collect the  
28 rates implemented by the public utility under subsection (f)  
29 pending a petition for rehearing or an appeal of the commission's  
30 order under IC 8-1-3. If the commission does not make a timely  
31 determination under subsection (f), notwithstanding any other  
32 provision of this article, upon the final determination in the  
33 investigation, including the determination on any petition for  
34 rehearing or appeal under IC 8-1-3, the public utility shall refund  
35 or collect any difference between:

- 36 (1) the revenues generated by the rates implemented by the  
37 public utility under subsection (f); and  
38 (2) the revenues that would have been generated by the lower

1 of:

2 (A) the rates authorized in the final determination in the  
3 investigation; or

4 (B) the rates of the public utility that were in effect  
5 immediately before the rates implemented by the public  
6 utility under subsection (f);

7 for the period beginning on the effective date of the rates  
8 implemented by the public utility under subsection (f) and ending  
9 on the effective date of the rates authorized in the final  
10 determination in the investigation. The public utility shall issue any  
11 refunds and initiate any collections required under this subsection  
12 not later than sixty (60) days after the effective date of the rates  
13 authorized in the final determination on the proceedings. The  
14 refunds or collections must include interest accrued from the date  
15 on which the public utility begins collecting the rates implemented  
16 by the public utility under subsection (f) at the interest rate set  
17 forth in IC 24-4.6-1-102.

18 (h) If the commission makes a timely determination under  
19 subsection (f) in an investigation into the reasonableness of a public  
20 utility's basic rates and charges for electric or gas service,  
21 IC 8-1-3-6 governs the rates that the public utility may collect  
22 pending a petition for rehearing or an appeal of the commission's  
23 order."

24 Page 7, delete lines 19 through 21, begin a new line block indented  
25 and insert:

26 "(3) a transaction described in subdivision (1) or (2) that:

27 (A) is combined with one (1) or more transactions  
28 described in subdivision (1) or (2);

29 (B) is conducted within three (3) years of a transaction  
30 described in subdivision (1) or (2); and

31 (C) causes at least fifty percent (50%) of the shares of a  
32 utility company's stock that are:

33 (i) outstanding at the time of the transaction; and

34 (ii) entitled to vote generally in the election of the utility  
35 company's board of directors;

36 to be beneficially held, directly or indirectly, immediately  
37 after the transaction by persons other than the persons  
38 that beneficially held, directly or indirectly, the shares of

1           the utility company's stock immediately before the  
2           transaction.

3           (b) This section does not apply to a transaction involving an  
4           exempt wholesale generator or a direct or an indirect affiliate of an  
5           exempt wholesale generator if either the generator or the affiliate:

6           (1) is under the jurisdiction of the federal energy regulatory  
7           commission; and

8           (2) either:

9           (A) is not controlled by; or

10          (B) is not an affiliate of;

11          a utility that engages in retail sales in Indiana."

12          Page 7, line 22, delete "(b)" and insert "(c)".

13          Page 7, line 23, after "individual," insert "or".

14          Page 7, line 24, delete "their" and insert "including".

15          Page 7, line 25, after "receivers" insert "of a utility company,".

16          Page 7, line 28, delete "water, or power; or" and insert "**power to**  
17          **more than forty thousand (40,000) retail gas or electric customers**  
18          **of the utility in Indiana;**

19          (2) **production, transmission, delivery, or furnishing of water;**  
20          **or".**

21          Page 7, line 29, delete "(2)" and insert "(3)".

22          Page 7, line 32, delete "(c)" and insert "(d)".

23          Page 7, line 34, delete "(d)" and insert "(e)".

24          Page 7, line 37, delete "(e) Without" and insert "**(f) Except as**  
25          **provided in subsection (g), without".**

26          Page 7, line 40, delete "energy" and insert "**utility**".

27          Page 7, line 42, delete "energy" and insert "**utility**".

28          Page 8, line 3, delete "energy" and insert "**utility**".

29          Page 8, line 4, delete "(f)" and insert "**(g) If the transaction to be**  
30          **consummated under subsection (f) is a transaction described in**  
31          **subsection (a)(3), approval by the commission is required only for**  
32          **the particular transaction that causes at least fifty percent (50%)**  
33          **of the then outstanding shares of the utility company's stock**  
34          **entitled to be voted generally in the election of the utility**  
35          **company's directors to be beneficially held, directly or indirectly,**  
36          **immediately after the transaction by persons other than the**  
37          **persons that beneficially held, directly or indirectly, the shares of**  
38          **the utility company's stock immediately before the particular**

1 transaction.

2 (h) A utility seeking approval of a transaction subject to this  
3 section shall file an application with the commission. After notice  
4 and hearing, the commission shall approve a transaction subject to  
5 this section if the commission:

6 (1) considers the effect of the transaction on the provision and  
7 cost of service to customers; and

8 (2) finds that the transaction will result in a new entity with  
9 the technical, financial, and managerial capacity to provide  
10 adequate and reliable retail utility service.

11 (i)".

12 Page 8, line 12, delete "(g)" and insert "(j)".

13 Page 8, line 12, delete "shall" and insert "**shall, after notice and**  
14 **public hearing,**".

15 Page 8, line 24, after "transaction." insert "**Notwithstanding any**  
16 **other law, rule, or order, an order entered under this section is not**  
17 **subject to a petition for rehearing to the commission, and an**  
18 **appeal from the order must be filed in the Indiana supreme court**  
19 **not more than twenty (20) days after the date of the order.**".

20 Page 8, line 25, delete "(h)" and insert "(k)".

21 Page 8, line 32, delete "(i)" and insert "(l)".

22 Page 8, line 34, delete "January 1," and insert "**April 1,**".

23 Page 8, line 37, delete "January 1," and insert "**April 1,**".

24 Page 9, line 7, delete "or".

25 Page 9, line 8, delete "IC 8-1-13." and insert "**IC 8-1-13; or**

26 **(4) a department of public utilities created under**  
27 **IC 8-1-11.1.**".

28 Page 9, line 26, delete "receivers," and insert "**receivers of a public**  
29 **utility,**".

30 Page 10, line 14, after "(f)" insert "**The commission shall**  
31 **determine whether each day during which a public utility violates**  
32 **this chapter or fails after due notice to comply with:**

33 (1) a standard of service established by commission rule; or  
34 (2) a rate or service requirement of a final and unappealable  
35 order of the commission;

36 constitutes a separate offense for purposes of subsection (d) or  
37 subsection (e).

38 (g)".



- 1 Page 10, line 27, delete "its" and insert **"the"**.
- 2 Page 10, line 34, delete "(g)" and insert **"(h)"**.
- 3 Page 11, delete lines 1 through 4, begin a new paragraph and insert:
- 4 **"(i) Notwithstanding section 112 of this chapter, a public utility**
- 5 **may not be subject to civil penalties under this section that exceed**
- 6 **in the aggregate the lesser of:**
- 7 **(1) three and five-tenths percent (3.5%) of the net operating**
- 8 **income authorized in the public utility's last order from the**
- 9 **commission approving basic rates and charges of the public**
- 10 **utility; or**
- 11 **(2) six million dollars (\$6,000,000);**
- 12 **for any twelve (12) month period.**
- 13 **(j) Notwithstanding section 112 of this chapter, a public utility**
- 14 **whose net operating income as authorized in the public utility's last**
- 15 **order from the commission approving basic rates and charges of**
- 16 **the public utility is equal to or less than zero dollars (\$0) may not**
- 17 **be subject to civil penalties under this section that exceed**
- 18 **five-tenths of one percent (0.5%) of the public utility's gross**
- 19 **intrastate operating revenue from retail utility sales for any twelve**
- 20 **(12) month period."**
- 21 Page 11, line 5, delete "(i)" and insert **"(k)"**.
- 22 Page 11, line 7, delete "(j)" and insert **"(l)"**.
- 23 Page 11, between lines 10 and 11, begin a new paragraph and insert:
- 24 **"(m) Notwithstanding any other provision in this article, a**
- 25 **public utility may not recover in the utility's rates or charges a civil**
- 26 **penalty assessed under this section."**
- 27 Page 11, line 32, after "allowed" insert **"or required"**.
- 28 Page 11, line 32, delete "IC 8-1-2-61(c)," and insert **"IC 8-1-2-61(c)**
- 29 **or IC 8-1-2-61(f),"**.
- 30 Page 13, between lines 31 and 32, begin a new paragraph and insert:
- 31 **"SECTION 11. IC 8-1-13-41.1 IS ADDED TO THE INDIANA**
- 32 **CODE AS A NEW SECTION TO READ AS FOLLOWS**
- 33 **[EFFECTIVE JULY 1, 2003]: Sec. 41.1. (a) The authority granted to**
- 34 **the commission under this section is in addition to the commission's**
- 35 **authority under section 41 of this chapter.**
- 36 **(b) This section does not apply when a corporation's violation**
- 37 **or failure to comply under subsection (d) is caused by**
- 38 **circumstances beyond the control of the corporation, including the**

1 following:

- 2 (1) Customer provided equipment.
- 3 (2) A negligent act or omission of a customer.
- 4 (3) An emergency situation.
- 5 (4) An unavoidable casualty.
- 6 (5) An act of God.

7 (c) A corporation subject to the commission's jurisdiction under  
8 this chapter and every officer of the corporation shall comply with  
9 all orders and rules of commission made under the authority of this  
10 chapter.

11 (d) Except as otherwise provided in this chapter, if the  
12 commission finds after notice and hearing that a corporation has  
13 violated this chapter or failed after notice to comply with:

- 14 (1) a standard of service established by commission rule; or
- 15 (2) a rate or service requirement of a final and unappealable  
16 order of the commission;

17 the commission may order the corporation to pay a civil penalty of  
18 not more than five thousand dollars (\$5,000) for each violation or  
19 failure to comply.

20 (e) Notwithstanding subsection (d), if the commission finds after  
21 notice and hearing that the corporation's violation or failure to  
22 comply demonstrates, by a continuing pattern of conduct, a  
23 disregard by the corporation of its obligation to remedy the  
24 violation or failure to comply found under subsection (d), the  
25 commission may impose an additional civil penalty of not more  
26 than ten thousand dollars (\$10,000) for each violation or failure to  
27 comply.

28 (f) The commission shall consider the following when  
29 determining the appropriateness of the imposition or amount of a  
30 civil penalty:

- 31 (1) The size of the corporation.
- 32 (2) The gravity of the violation or failure to comply.
- 33 (3) The good faith of the corporation in attempting to remedy  
34 the violation or failure to comply or achieve compliance after  
35 receiving notification of the violation or failure.
- 36 (4) The effect of the civil penalty on the corporation's  
37 members and the capitalization of the corporation.
- 38 (5) Whether the corporation's members had approved or

1 requested the act or omission causing the violation or failure  
2 to comply.

3 In the order imposing the civil penalty, the commission shall make  
4 specific findings with respect to the factors described in  
5 subdivisions (1) through (5).

6 (g) A corporation may not be subject to both a civil penalty  
7 under this section and a penalty agreed to in a settlement  
8 agreement approved by the commission for the same violation or  
9 failure to comply. If the commission has approved a settlement  
10 agreement that includes penalties or remedies for noncompliance  
11 with specific provisions of the settlement agreement, the penalties  
12 under this section do not apply to those instances of noncompliance  
13 during the life of the settlement agreement.

14 (h) The total penalties imposed under this section on a  
15 corporation in a calendar year may not exceed five tenths of one  
16 percent (0.5%) of the corporation's gross intrastate operating  
17 revenue from retail sales of energy, after deducting the  
18 corporation's cost of fuel and purchased electricity.

19 (i) The commission shall determine whether each day during  
20 which a corporation violates this chapter or fails after due notice  
21 to comply with:

- 22 (1) a standard of service established by commission rule; or
- 23 (2) a rate or service requirement of a final and unappealable
- 24 order of the commission;

25 constitutes a separate offense for purposes of subsection (d).".

26 Page 13, line 34, delete "The commission shall".

27 Page 13, delete lines 35 through 42 and insert "Any".

28 Renumber all SECTIONS consecutively.

(Reference is to HB 1529 as introduced.)

**and when so amended that said bill do pass.**

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Representative Stevenson